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EXAMINER
JORDAN, K

ART UNIT	PAPER NUMBER
1205	5

DATE MAILED: 10/29/91

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 8/13/91 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-66 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-66 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

Art Unit 125

Claims 1-66 are remaining in this application.

The applicants' traversal of the restriction requirement has been considered and is deemed to be persuasive. The restriction requirement set forth in the office action dated May 13, 1991 is hereby withdrawn and all of the claims remaining in the application will be examined.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-66 are rejected under 35 U.S.C. § 103 as being unpatentable over Clandinin et al. (AA) in view of Traitler et al. (AI).

The claims appear to be drawn to processes and compositions for diet supplements containing long chain polyunsaturated fatty acids. Clandinin et al. disclose an infant supplement containing arachidonic acid, docosahexaenoic acid, and eicosapentanoic acid

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obtained from various vegetable oils. (see column 2, line 61- column 3, line 8 and column 6, line 8 - column 7, line 17). The claimed subject matter differs from the disclosure of the above primary reference in claiming the addition of gamma linolenic acid to the supplement. To add gamma linolenic acid to an infant nutritional supplement would have been obvious in view of Traitler et al. which teach the use of gamma linolenic acid in infant milk formula (see column 3, lines 21-61). The choice of specific oils is deemed to be a matter of obvious alternative, absent evidence to the contrary, since the fatty acids contained therein are chemically the same. The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. The applicants' remarks regarding the source of oils have been considered but are found to be unpersuasive since the active fatty acid substances are not seen to chemically differ from the fatty acids of non-microbial sources. Nothing unexpected has been shown by the use of microbial oils.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Jordan whose telephone number is (703) 308-4611.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

JORDAN:mp
October 25, 1991


Frederick E. Waddell
Supervisory Patent Examiner
Group 120